

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of AT&T, Inc. for Expedited	)	
Interim Waiver of Certain Structural	)	WC Docket No. 06-130
Separation Rules for Advanced Services	)	
_____	)	

**OPPOSITION OF COMPTTEL**  
**TO AT&T INC.'S PETITION FOR EXPEDITED INTERIM WAIVER**

**I. INTRODUCTION**

In response to the Federal Communications Commission's ("Commission") July 5, 2006 *Public Notice*,<sup>1</sup> COMPTTEL hereby submits its Opposition to AT&T Inc.'s ("AT&T") Petition for Expedited Interim Waiver, which was filed with the Commission on June 30, 2006 in the above-captioned docket. AT&T's Petition does not meet the standard for waiver under Section 1.3 of the Commission's rules and for that reason should be denied. Specifically, granting AT&T the relief requested in the Petition would undermine the fundamental policy objectives underlying the Commission's structural separation rules for advanced services and would elevate the risk of unreasonable discrimination and cross-subsidization by AT&T to unacceptable levels. Moreover, AT&T's claims that the Commission's "sharing restrictions" significantly hamper its ability to efficiently

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<sup>1</sup> *Pleading Cycle Established for Comments on Petition of AT&T Inc. for Expedited Interim Waiver of Certain Structural Separation Rules for Advanced Services*, Public Notice, WC Docket No. 06-130, DA 06-1394 (rel. July 5, 2006).

deploy and provision advanced services are belied by AT&T's own data. Given AT&T's pending merger with BellSouth and the temporary nature of existing merger conditions that help ensure fair competition, preservation of competitive safeguards are more important now than ever. Accordingly, the Commission must deny AT&T's Petition.

## II. ARGUMENT

AT&T asks the Commission to waive certain conditions to which it has *twice voluntarily* agreed in order to get other relief -- first in exchange for approval of the SBC-Ameritech merger,<sup>2</sup> and later in exchange for forbearance from the requirement that it tariff its advanced services.<sup>3</sup> AT&T's Petition covers the following SBC-Ameritech merger conditions, as further applied in the *ASI Detariffing Order*, concerning the sharing of information, employees, and facilities between its incumbent LEC operations and its advanced services affiliates:

- Section I.3 (governing section 272 requirements for separate advanced services affiliates);
- Sections I.4.a through I.4.e (concerning inventory of advanced services equipment and capabilities; customer sales process for new installations; design of customer's advanced services; assignment of the advanced services equipment; and creating and maintaining the customer's record, including the circuit layout record, respectively); and

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<sup>2</sup> *Applications of Ameritech Corp. and SBC Communications, Inc., For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, Memorandum Opinion and Order, 14 FCC Rcd 14,712, ¶¶348-518 & App. C (1999) ("*SBC-Ameritech Merger Order*").

<sup>3</sup> *Review of Regulatory Requirements of Incumbent LEC Broadband Telecommunications Services*, Memorandum Opinion and Order, 17 FCC Rcd. 27000, ¶15 (2002) ("*ASI Detariffing Order*").

- Sections I.4.g through I.4.k (regarding connecting and testing required to provision the advanced service; installing and testing CPE associated with the advanced service; advising customers of order status; receipt and isolation of troubles; and repair of advanced service troubles, respectively).<sup>4</sup>

Having received the benefits of its bargains, AT&T now asks the Commission to waive its corresponding obligations in the name of the “public interest.” Despite its claims, AT&T has not shown that the public interest would be served by lifting these structural separation requirements. To the contrary, the public interest dictates that AT&T continue to abide by those requirements.

**A. CONTINUED APPLICATION OF AT&T’S ADVANCED SERVICE AFFILIATE REQUIREMENTS IS IN THE PUBLIC INTEREST**

Section 1.3 of the Commission’s rules governs petitions for waiver. That rule provides that “[t]he provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter.”<sup>5</sup>

The United States Court of Appeals for the D.C. Circuit has interpreted Section 1.3 to mean that a waiver may be appropriate if: (1) special circumstances support a finding that strict adherence would not be in the public interest; and (2) a grant of waiver would not undermine the underlying policy objectives of the rule in question.<sup>6</sup>

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<sup>4</sup> See Petition at n.3.

<sup>5</sup> 47 C.F.R. §1.3.

<sup>6</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

1. Strict Adherence to the Structural Separation Requirements Serves the Public Interest

In support of its request, AT&T contends, *inter alia*, that the Commission's advanced services affiliate requirements impose costs on AT&T that make strict adherence inconsistent with the public interest.<sup>7</sup> AT&T explains that granting it relief will permit it to more quickly and efficiently provision broadband Internet access services and deploy its Project Lightspeed initiative.<sup>8</sup>

AT&T's arguments fall far short of meeting its burden to demonstrate that waiver of the structural separation requirements will serve the public interest. First, the mere fact that AT&T may continue to incur some costs in complying with the advanced services affiliate requirements does not outweigh the public interest harms that compelled the Commission to adopt the requirements in 1999. The Commission established the separate affiliate structure in the *SBC-Ameritech Merger Order* specifically to ensure that competing advanced services providers received effective, non-discriminatory access to the inputs necessary for their advanced services offerings.<sup>9</sup> The Commission expressly found that "the affiliate structure set forth in the conditions will ensure that an SBC/Ameritech advanced services affiliate occupies a position in the market comparable not to an incumbent, but rather to non-incumbent advanced service competitors."<sup>10</sup> The potential for AT&T to engage in discrimination or improper cost allocation, *e.g.*, cross-

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<sup>7</sup> Waiver Petition at 10.

<sup>8</sup> *Id.* at 10-11.

<sup>9</sup> *See ASI Detariffing Order*, 17 FCC Rcd. 27000 at ¶29.

<sup>10</sup> *SBC-Ameritech Merger Order*, App. C - Conditions at ¶461.

subsidization, continues today. Indeed, the rationale behind the structural separation requirements is even more compelling today as a result of SBC's merger with AT&T and its pending acquisition of BellSouth. AT&T is far larger and more powerful than it was at the time the advanced services rules were adopted. Its increased size and market dominance make it more likely that any discrimination by AT&T against its advanced services competitors or any unlawful subsidization would result in significant harm to consumers.

AT&T also argues that the Commission's advanced services affiliate requirements "impose considerable inefficiency and inconvenience on consumers"<sup>11</sup> and "impede the efficient operation of the networks that support AT&T's advanced services."<sup>12</sup> For example, AT&T states that "when customers experience issues with their services, they typically deal with a customer service representative who must seek advice and diagnoses from both network operations center groups. This duplicative arrangement invariably leads to delay in responding to and resolving issues with customers' services."<sup>13</sup> What AT&T fails to mention, however, is that the SBC-Ameritech merger conditions permit a different result. Indeed, section I.3.c of the merger conditions expressly provides that:

[a]ny SBC/Ameritech incumbent LEC may provide the operations, installation, and maintenance ("OI&M") services permitted under Paragraph 4 to any separate Advanced Services affiliate on a non-discriminatory basis pursuant to a tariff, written affiliate agreement, or approved interconnection agreement, provided that the

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<sup>11</sup> Waiver Petition at 13.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 13-14.

same services made available to the separate affiliate are made available to unaffiliated providers of Advanced Services in that state on a non-discriminatory basis consistent with the requirements of 47 U.S.C. §272(c) and the Commission's implementing rules as in effect on August 27, 1999, where not inconsistent with the provisions of this Section.<sup>14</sup>

Thus, AT&T has always been free to prevent the customer service problems about which it now complains. AT&T's decision not to avail itself of the efficiencies contemplated by the above-referenced condition, for whatever reason, does not provide it with a basis for waiver of the structural separation requirements.

AT&T also claims that the requirement that ASI and AT&T maintain separate network planning and operations functions hinders its efforts to deploy and offer its new Project Lightspeed services.<sup>15</sup> AT&T's contentions are belied by its own data, however. For example, AT&T boasted that its first quarter 2006 "data revenues grew at a double-digit rate."<sup>16</sup> AT&T continued, explaining that:

[T]otal consumer connections – retail lines and video connections – posted a net gain of 224,000 in the quarter and 775,000 over the past four quarters. AT&T posted a total net gain of 511,000 regional DSL lines during the quarter – 1.8 million over the past four quarters – to reach more than 7.4 million lines in service . . . DSL penetration on consumer primary lines reached 27.7

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<sup>14</sup> *SBC-Ameritech Merger Order*, App. C - Conditions, at §I.4.c. See also, *Section 272(b)(1)'s "Operating Independently" Requirement for Section 272 Affiliates*, Report and Order, 19 FCC Rcd 5102, ¶34 (2004) ("*OI&M Sharing Order*") (modifying the *ASI Detariffing Order* to eliminate the OI&M sharing restriction to the extent that the separate affiliate condition of the forbearance granted in that *ASI Detariffing Order* included the OI&M restriction contained in the *SBC-Ameritech Merger Order*).

<sup>15</sup> Waiver Petition at 14.

<sup>16</sup> AT&T Investor Briefing, issued April 25, 2006 at 4. The briefing is available on AT&T's Web site at [http://www.sbc.com/Investor/Financial/Earning\\_Info/docs/1Q\\_06\\_IB\\_FINAL.pdf](http://www.sbc.com/Investor/Financial/Earning_Info/docs/1Q_06_IB_FINAL.pdf).

percent at the end of the first quarter, up from 19.6 percent a year earlier and 12.9 percent two years before.<sup>17</sup>

AT&T also claims that enterprise wireline data growth “was led by a 14.0 percent increase in IP data revenues, which include DSL Internet, dedicated Internet access, virtual private networks and hosting services.”<sup>18</sup> Thus, based on its own data, AT&T does not appear to be hampered by the advanced services restrictions from which it seeks waiver here. AT&T’s claims provide no basis to remove the structural separation requirements, which the Commission correctly put in place to prevent the potential for SBC to discriminate against its rivals or engage in unlawful cost allocation.

2. Grant of the Waiver Would Undermine the Policy Objectives of the Structural Separation Requirements

In establishing the structural separation requirements at issue here, the Commission sought to prevent SBC’s incumbent LEC affiliates from giving preferential treatment to their advanced services provider affiliates and thereby discriminate against competing advanced services providers. Granting AT&T’s requested waiver would seriously undermine that objective.

Today’s advanced services market is not robust enough to warrant the relief that AT&T requests. To the extent that there is meaningful advanced services competition, many of those competitors continue to rely on AT&T’s networks for inputs needed to serve their subscribers. The public interest will be harmed if these competitors are unable to access the services and facilities necessary to provide

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<sup>17</sup> *Id.* at 5.

<sup>18</sup> *Id.* at 6.

service or are able to obtain access only on discriminatory terms and conditions. After its mergers with SBC and BellSouth, AT&T will be the incumbent Regional Bell Operating Company in 22 states that include well over 60% of end user switched access lines.<sup>19</sup> The temporary nature of existing (and potential) merger conditions that help ensure fair competition make the preservation of competitive safeguards more important now than ever. It is crucial to the public interest and to further the objectives of the Telecommunications Act of 1996 that there be alternative sources of competitive supply for the telecommunications inputs necessary to provide advanced services that can act as a check on the prices and quality of service provided by AT&T. Indeed, AT&T's sheer size and market power will enable it to discriminate against competing providers of advanced services, thereby thwarting innovation in the market.

Providers of advanced services often need interconnection and access arrangements that differ from those needed to provide traditional interexchange and local voice services. Because the services and arrangements are new, it will be easier for AT&T to assert technical infeasibility or to discriminate. Further, it will be difficult for the industry or the Commission to review or police AT&T's conduct given the lack of benchmark firms with which to compare AT&T's actions. Such discriminatory practices may increase an advanced services competitor's overall costs or limit its ability in the first instance to access the inputs needed to serve its customers. Thus, contrary to AT&T's statements, consumers would actually be

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<sup>19</sup> FCC Industry Analysis and Technology Division, *Local Telephone Competition: Status as of June 30, 2005*, Table 7 (April 2006).



harmful by a grant of AT&T's waiver request, as advanced service competitors will likely be forced to pass the increased costs on to their consumers or exit the market, thereby either increasing a consumer's costs for service or reducing the consumer's choice of service providers. Thus, the advanced services structural separation rules are more necessary today than they were in 1999.

### III. CONCLUSION

For the foregoing reasons, continued adherence to the advanced services sharing requirements is in the public interest and grant of a waiver would undermine the underlying policy objectives of the rules at issue. Accordingly, the Commission should deny AT&T's waiver request pursuant to Section 1.3 of the Commission's rules and in doing so, preserve competition in the still-evolving advanced service marketplace.

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Respectfully submitted,

/s/ Mary C. Albert  
Mary C. Albert  
COMPTEL  
1900 M Street N.W., Suite 800  
Washington, D.C. 20036  
Tel.: (202) 296-6650  
Fax: (202) 296-7585